

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE PORK ANTITRUST LITIGATION

Civil Nos. 18-1776, 19-1578, and
19-2723 (JRT/HB)

This Document Relates To:

All Actions. **ORDER DENYING PERMISSION TO FILE A
MOTION TO RECONSIDER**

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On October 20, 2020, the Court granted Defendant Indiana Packer Corporation's ("IPC") Motions to Dismiss, dismissing with prejudice all claims asserted against IPC by Plaintiffs in the three actions consolidated here. *In re Pork Antitrust Litig.*, Nos. 18-1776, 19-1578, 19-2723, 2020 WL 6149666, at *33–34 (D. Minn. Oct. 20, 2020). The Court granted IPC's Motions because Plaintiffs' allegations were insufficient to plausibly plead parallel conduct by IPC in violation of the Sherman Act, 15 U.S.C. § 1. *See id.* at *3, 5. On October 26, 2020, the Consumer Indirect Purchaser Plaintiffs ("IPPs") requested permission to file a motion to reconsider, (ECF 18-1776, Letter, Oct. 26, 2020, Docket No. 523), asserting that the Court's October 20, 2020 Order addressed only IPPs' *per se* Sherman Act claim against IPC, but did not directly address their rule-of-reason Sherman Act claim, (*see id.* at 1–2.) For the following reasons, the Court will deny IPPs permission to file a motion to reconsider.

First, the *per se* rule of illegality and the rule of reason do not give rise to separate claims; rather, they are distinct means of analyzing whether a conspiratorial agreement unreasonably restrains trade in violation of the Sherman Act. *See Impro Prod., Inc. v. Herrick*, 715 F.2d 1267, 1273 n.8 (8th Cir. 1983) ("Whether a rule of reason or *per se* analysis is applicable to [a Sherman Act claim] depends, of course, on the type of conduct in which the defendants engage in furtherance of their conspiracy or conspiracies."); *Five Smiths, Inc. v. Nat'l Football League Players Ass'n*, 788 F. Supp. 1042, 1045 (D. Minn. 1992)

(“Two methods of analysis are used to determine whether a particular concerted action violates [the Sherman Act]: the per se rule and the rule of reason.”).

As such, before even reaching the question of whether to apply the per se rule of illegality or the rule of reason, a plaintiff must first clear the initial hurdle of plausibly alleging concerted action. *See Impro Prod.*, 715 F.2d at 1273 (“A threshold question is whether [plaintiff] has alleged a cause of action that is a cognizable conspiracy to restrain trade[.]”); *Reg’l Multiple Listing Serv. of Minn., Inc. v. Am. Home Realty Network, Inc.*, 960 F. Supp. 2d 958, 980–985 (D. Minn. 2013) (first determining that there was concerted action before turning to whether the conspiracy unreasonably restrained trade under either the per se rule of illegality or the rule of reason).

Here, the Court’s October 20, 2020 Order found that Plaintiffs, including IPPs, had not plausibly alleged concerted action by IPC and, therefore, they failed to clear the initial hurdle to plead a plausible Sherman Act claim against IPC.¹ *In re Pork Antitrust Litig.*, 2020 WL 6149666, at *3–5. Thus, with respect to IPC, any need to consider the second step of the inquiry was obviated.²

¹ The Court notes that it determined whether Plaintiffs had plausibly pleaded concerted action by analyzing Plaintiffs’ allegations of parallel conduct among Defendants, which can give rise to a reasonable inference of a conspiratorial agreement among parties. *See In re Pork Antitrust Litig.*, 2020 WL 6149666, at *4–5. The Court later concluded that Plaintiffs’ “allegations, when viewed as a whole, are sufficient to plausibly plead parallel conduct against all Defendants, except [IPC],” *id.* at *5. Necessarily, then, concerted action by IPC could not be reasonably inferred.

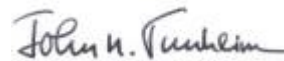
² IPPs suggest that IPC’s participation in Agri Stats “could [have] generate[d] anticompetitive effects,” (Letter at 2), and thus demonstrates a plausible Sherman Act violation under rule of reason analysis. However, assuming that IPPs had cleared the first step of the inquiry with

As such, the Court finds that IPPs have not shown the necessary “compelling circumstances to obtain [] permission” to file a motion to reconsider, D. Minn. L.R. 7.1(j), as the October 20, 2020 Order contains no manifest errors of law or fact, *see Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 413–14 (8th Cir. 1988). Accordingly, the Court will deny IPPs’ permission to file a motion to reconsider.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEARBY ORDERED** that the Consumer Indirect Purchaser Plaintiffs’ Request for Permission to File a Motion to Reconsider [CV18-1776, Docket No. 523] is **DENIED**.

DATED: February 4, 2021
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court

respect to IPC, the Court notes that merely suggesting that anticompetitive effects could have possibly followed from an exchange of information is not enough to make it past the second step of the inquiry. *See, e.g., Olean Wholesale Grocery Coop v. Agri Stats, Inc.*, No. 19-8318, 2020 WL 6134982, at *8 (N.D. Ill. Oct. 19, 2020) (“[Plaintiffs] have failed to allege that the information exchange had any anti-competitive impact on the output or prices of [Defendant’s] products. Without those allegations, Plaintiffs fail to state a claim against [Defendant].”). Here, Plaintiffs, including IPPs, alleged only that IPC “indicated that it expected to reduce production in 2012 but provide[d] no specifics.” *In re Pork Antitrust Litig.*, 2020 WL 6149666, at *5 (internal quotation marks omitted).